ATTORNEY FOR APPELLANT:

ELLEN M. O'CONNOR
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JOSEPH DELAMATER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JERMAINE DAVIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0802-CR-174
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0705-FA-94511

September 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Jermaine Davis appeals his conviction and sentence for battery as a class B felony.[1] Davis raises two issues, which we restate as:

I. Whether the evidence is sufficient to sustain his conviction; and

II. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. Early in the morning on April 20, 2007, Davis, then eighteen years old, and Kenneth Head, then seventeen years old, received a message on a "chat line" from a voice that "sounded like a girl" and invited them to a party where "there wasn't enough guys." Transcript at 67. Head called the number given in the message, and the person who answered offered to pick up Davis and Head and take them to the party. Davis and Head agreed, but, rather than the female they were expecting, Max Pierce arrived by car to pick them up. Pierce explained that the girls at the party were too drunk to drive and had sent him instead. Davis sat in the passenger seat of the car, and Head sat in the back seat, where, incidentally, Pierce's father had left a rubber mallet days earlier.

Pierce drove Davis and Head to a house, and Head noted that there was a van parked outside. No one was at the house. Pierce explained that the girls were "right down the street" and offered them both a beer, which Davis accepted. Id. at 77. After twenty minutes or so, Head "started to get a fishy feeling" because "nobody had showed

[1] Ind. Code § 35-42-2-1.5 (2004).

up," and Head asked Pierce to take him home. Id. Pierce agreed, and they walked back to the car.

Once they reached the car, Davis pulled a rubber mallet from his hooded sweatshirt and struck Pierce in the head. He struck Pierce again, and Pierce fell to the ground. Davis then struck him in the head another "seven to ten times" with the mallet and, screaming "f*** you, fagot [sic]," fifteen times in the groin. Id. at 82-83. When Head attempted to stop Davis, Davis pushed him to the grass and threatened to kill him if Head "told anybody." Id. at 81, 84. Davis and Head then drove Pierce's car to the apartment where Davis was staying, and Davis ripped the license plate off the car and threw it onto some railroad tracks nearby.

Pierce somehow found his way home. He was unable to speak, but his father, noting that Pierce was bleeding from his eye and left ear and that his head was covered in blood, thought Pierce had been in an accident and called for an ambulance. Pierce suffered a severe brain injury and multiple fractures of his skull and face, was hospitalized for over a month, and, even after rehabilitation, can barely speak or walk.

The State charged Davis with attempted murder. At a bench trial on January 14, 2008, Head testified that Davis beat Pierce with the rubber mallet. Davis, however, testified that he was just returning from using the bathroom at the house when Head "started swinging on the dude" with a "club type object." Id. at 211-212. He claimed that Head emptied Pierce's pockets, drove them in Pierce's car to the apartment where Davis was staying, and ordered Davis to remove the license plate from Pierce's car. On cross examination, Davis agreed that "some gay thing was going on" between Head and

Pierce. Id. at 220. Finding that Davis's testimony "doesn't make any sense," the trial court found that Davis had struck Pierce but that his specific intent was not to kill Pierce, "but instead to batter him and harm him." Id. at 228, 232. The trial court found Davis guilty of the lesser included offense of aggravated battery as a class B felony.

At sentencing, the trial court addressed Davis as follows:

> [T]he Court, sir, is going to find as aggravating the fact that you do have a history of delinquent activity. You have a Battery true finding in July of 2001 wherein you struck someone with a baseball bat in the arm and the hand. You have a true finding in July of 2006 for Resisting Law Enforcement . . . which would have been a D felony had you been an adult. The Court's also going to consider as aggravating your character. You have an arrest in 2005 for a Battery which would have been a misdemeanor, and your behavior since you've been in the Marion County Jail has been reprehensible. And on January 12th of 2008 it says that you were found guilty in the jail of – and reclassed as an inmate because you threatened to throw feces on another inmate. And on July 7th, 2008 you were placed in deadlock and charged with Battery or Attempt [sic] Battery of an individual in the jail, and committing or attempting to insight [sic] a violation [sic] act. You have a July 28th, 2007 jail violation wherein it says you became aggressive and cursed out the officer. Eventually, . . . they . . . returned you to your cell block. You continued to yell . . . making loud boisterous noises, insolence toward staff members, being in unauthorized area[s] and . . . refusing to cooperate or obey law enforcement. And there are two other violations since you've been in the jail. The Court, sir, will find as mitigating your age, and the fact that you did express some remorse today. The Court is going to find that the aggravating circumstances outweigh the mitigators. This was a particularly heinous and brutal offense regardless of why it happened. It was a horrible, senseless act, and the victim is severely, severely injured because of the incident. So the Court is going to find that the aggravators outweigh the mitigators and sentence you to 15 years in the Department of Corrections.

Id. at 266.

I.

The first issue is whether the evidence is sufficient to sustain Davis's conviction. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

The offense of aggravated battery is governed by Ind. Code § 35-42-2-1.5, which provides:

> A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes:
>
> (1) serious permanent disfigurement;
> (2) protracted loss or impairment of the function of a bodily member or organ; or
> (3) the loss of a fetus;
>
> commits aggravated battery, a Class B felony.

Thus, to convict Davis of aggravated battery, the State needed to prove that Davis knowingly or intentionally inflicted an injury on Pierce that created a substantial risk of death or caused serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Davis argues that Head was the perpetrator of the battery on Pierce. He points out that Head "set up the meet" with Pierce. Appellant's Brief at 9. He also notes that, on the way to the house, Head sat in the backseat of the car, where Pierce's father testified he had left a rubber mallet days earlier. The trial court, however, found that Davis's claim that Head was the perpetrator "doesn't make any sense," if indeed Head and Pierce "were in some gay relationship." Transcript at 228. Rather, the State produced evidence, in the form of Head's testimony, that Davis perpetrated the battery on Pierce, and the uncorroborated testimony of one witness, including an accomplice, may be sufficient by itself to sustain a conviction on appeal. See Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999). We conclude that Davis would have us reweigh the evidence and judge the credibility of witnesses, which we cannot do.

Given the facts of the case, we conclude that the State presented evidence of probative value from which a reasonable trier of fact could have found Davis guilty beyond a reasonable doubt of aggravated battery as a class B felony. See, e.g., Oeth v. State, 775 N.E.2d 696, 702 (Ind. Ct. App. 2002) (holding that the evidence was sufficient to support defendant's conviction for aggravated battery as a class B felony where defendant struck victim in the back of the head with a hatchet resulting in profuse bleeding and requiring several stitches), trans. denied.

II.

The next issue is whether Davis's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's

decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Davis argues that the trial court should have sentenced him to ten years given his immaturity and limited schooling.

Our review of the nature of the offense reveals that Davis struck Pierce in the head with a rubber mallet at least seven to ten times and another fifteen times in the groin. Davis sustained a severe brain injury, was hospitalized for over a month, and, even after rehabilitation, can barely speak or walk.

Our review of the character of the offender reveals that Davis, though young, has a juvenile record including true findings for battery and resisting law enforcement. Furthermore, Davis was involved in numerous incidents while in jail awaiting trial, including two reports of assault, an incident where Davis threatened to throw feces on another inmate, and an incident where he became aggressive with an officer.

After due consideration of the trial court's decision, we cannot say that the fifteen year sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Kincaid v. State, 839 N.E.2d 1201, 1208 (Ind. Ct. App. 2005) (holding that defendant's concurrent twenty-year sentences for battery and aggravated battery as class B felonies were not inappropriate in light of the nature of the offense and the character of the offender).

For the foregoing reasons, we affirm Davis's conviction and sentence for aggravated battery as a class B felony.

Affirmed.

BAKER, C. J. and MATHIAS, J. concur